

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 251 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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OMPRAKASH, ALIAS KALLU

PREMCHAND SHARMA

Versus

COMMISSIONER OF POLICE

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Appearance:

MR SATISH R PATEL for Petitioner

MR JANI Ld. AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 13/07/98

ORAL JUDGEMENT

The petitioner in this petition under Article 226 of the Constitution of India, has challenged the legality and validity of the order of detention dated 31.12.1997 passed by the Police Commissioner, Vadodara city under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985.

In the grounds of detention, supplied to the

petitioner, the detaining authority has placed reliance on 7 prohibition cases registered against the petitioner. Four, out of seven cases, are pending for trial, while three cases are at the investigation stage. Over and above this registered cases, the detaining authority has also relied on the statements of three witnesses, whose identity has not been disclosed exercising the powers under sec.9(2) of the Act for the alleged incidents dated 17.11.1997, 14.10.1997 and 11.12.1997. IN those statements, the witnesses were beaten either on the ground that they refused to store the liquor belonging to the petitioner in their houses or on the ground that the concerned witness is informant to the police or on the ground that the concerned witness who was rickshaw driver, who refused to carry the liquor of the petitioner in his rickshaw. When this witnesses were beaten on the public road, many people gathered, however, they started running helter and skelter when the petitioner and his men ran towards them with the open knife, and an atmosphere of terror and fear was created. With this material, the detaining authority has recorded a finding that the petitioner is a bootlegger within the meaning of sec. 2(b) of the Act, and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention order is necessary.

The Supreme Court in Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad city, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witnesses are minor incidents of beating by the petitioner and which could not be said to create feeling of insecurity among the general public. IN view of this, the order of detention is vitiated.

In the result, this petition is allowed. The impugned order dated 31.12.1997 is set aside. The petitioner is ordered to released forthwith, if he is not required for any other lawful reason. Rule made absolute.

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